

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1725 of 1997

to

FIRST APPEAL No 1761 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SPECIAL LAND ACQUISITION OFFICER

Versus

RAJA HEMRAJ KANBI DECD.THRD' HEIRS GANGABEN RAJABHAI KANBI

Appearance:

MR PG DESAI, GP for Appellants

MR VIPUL S MODI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

Date of decision: 06/04/98

ORAL COMMON JUDGEMENT (PER : Y.B.BHATT, J)

Appeals admitted. Mr. Vipul Modi, 1d. counsel

waives service for the respondent- claimants. Upon a joint request, the appeals are taken up for final hearing today.

2. These are the appeals filed on behalf of the State of Gujarat under Sec.54 of the Land Acq. Act read with Sec.96 of the C.P.Code, wherein the appellants have challenged the common judgment and awards passed by the Reference Court under Sec.18 of the said Act.

3. The pertinent facts in brief are to the effect that the land under acquisition located in and around village Moti Mahudi, Ta: Dhanera, Dist.: Banaskantha, were acquired for Sipu Dam Project under a notification under Sec.4 of the said Act dated 18.04.1984.

4. The Land Acq. Officer, in his award under Sec.11 of the said Act, determined the market value and made a corresponding offer at the rate of Rs. 5500/ per Hectare for irrigated land, Rs. 3500/ per Hectare for non-irrigated land and Rs. 100/ per Hectare for kharaba land.

5. Not having accepted the awards, the claimants preferred their respective references under Sec.18 of the said Act. The Reference Court after recording evidence in the matter and appreciating the same, determined the market value of the acquired land at the rate of Rs.4.50 per sq.mt. for irrigated land, Rs. 4.00 per sq.mt. for non-irrigated land and maintained the market value as determined by the Land Acq. Officer for Kharaba land at the rate of Rs. 100/ per Hectare. It is this judgment and awards which are the subject matter in these appeals.

6. At the commencement of hearing of the present appeals, ld. counsel for the respondents- original claimants drew our attention to four decisions of this Court, copies whereof were also given to the ld. counsel for the appellant. It is not necessary for us to refer in greater detail to the said decisions inasmuch as it is on the basis of these decisions that the ld. counsel for the respondents- original claimants made a fair offer of permitting a reduction in the market value of the land under acquisition to Rs. 3.50 per sq.mt. (for both irrigated and non-irrigated land), while maintaining the market value of Rs. 100/ per Hectare for Kharaba land. In the light of the aforesaid decisions, the ld. counsel for the appellant State conceded only that this was a fair offer which the Court would be justified in accepting. Accordingly, on the basis of the aforesaid submissions, we determine the market value of the

acquired land at Rs. 3.50 per sq.mt. (for both irrigated and non-irrigated land).

7. Although it was sought to be contended that the Reference Applications were in fact time-barred, we are satisfied that the said contention cannot be sustained on the facts of the case.

7.1 Firstly, we note that the Land Acq.Officer has been examined at Exh.251 and yet he is not able to establish either that the original claimants were present when the award was declared or that notice under Sec.12(2) of the said Act has been issued and served upon the concerned claimants. Under the circumstances, when the essential and basic facts are not established from the evidence on record, we are not inclined to interfere with the finding recorded by the Reference Court.

8. Accordingly, the market value of the acquired land is determined at Rs. 3.50 per sq.mt. for irrigated and non-irrigated land and at Rs. 100/- per Hectare for Kharaba land. The impugned judgment and awards are, therefore, modified only to the aforesaid extent and confirmed as regards the other part. These appeals are partly allowed with no orders as to cost.

9. Decree accordingly.

10. The appellant State is directed to deposit before the Reference Court the necessary amount separately in each Land Ref. Case due under the present decree within a period of four months from the date of drawing up of the present decree.

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